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HOUSE BILL 619

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Patsy Trujillo Knauer

AN ACT

RELATING TO NURSING MOTHERS; PROVIDING PROTECTION FOR NURSING MOTHERS IN THE WORK PLACE; PRECLUDING NURSING MOTHERS FROM JURY DUTY; PROVIDING AN INCOME TAX CREDIT FOR EMPLOYERS WHO PROVIDE LACTATION EQUIPMENT AND LOCATIONS FOR EMPLOYEES IN THE WORK PLACE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] NURSING MOTHERS. --

A. An employer shall provide reasonable work schedule flexibility, including scheduling breaks and work patterns, for an employee who needs to express breast milk for her infant child or to nurse her infant child. This will include unpaid break time for up to one hour a day that shall, if possible, run consecutively with any break time already provided to the employee. The employer and employee shall

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1 develop a plan that is mutually satisfactory and provides for
2 the least disruption of the operations of the employer.

3 B. An employer shall make reasonable efforts to
4 provide a safe, private and sanitary room or other location,
5 in close proximity to the work area, other than a toilet
6 stall, with a working electrical outlet where the employee can
7 express her milk in privacy. The employer shall be held
8 harmless if reasonable effort has been made.

9 C. For the purpose of this section, "employer"
10 means a person or entity that employs one or more employees
11 and includes the state and its political subdivisions.

12 D. For the purposes of this section, "infant
13 child" means a person zero to one year of age.

14 Section 2. A new section of the Income Tax Act is
15 enacted to read:

16 "[NEW MATERIAL] EMPLOYER LACTATION SUPPORT EXPENDITURES--
17 TAX CREDIT. --

18 A. To encourage support and protection for nursing
19 mothers in the workplace, a taxpayer who files an individual
20 New Mexico income tax return, who is not a dependent of
21 another individual and who provides a lactation location on
22 his business premises in New Mexico, purchases or rents
23 lactation or lactation-related equipment for use on those
24 premises, hires a lactation consultant or otherwise provides
25 lactation-related support services for his employees in New

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1 Mexico may claim a credit in an amount equal to the total
2 expenses, net of any reimbursements, for such equipment,
3 services and provision of a lactation space incurred and paid
4 by the taxpayer in the taxable year.

5 B. If two or more taxpayers claiming a credit
6 pursuant to Subsection A of this section share in the cost of
7 providing a lactation space or lactation or lactation-related
8 equipment or services, each taxpayer shall be allowed a credit
9 in the proportion of the taxpayer's share of the total
10 expenses incurred by all taxpayers for that shared lactation
11 space, equipment and services in the taxable year.

12 C. A husband and wife who file separate returns
13 for a taxable year in which they could have filed a joint
14 return may each claim only one-half of the credit that would
15 have been allowed on a joint return.

16 D. The credit provided in Subsection A of this
17 section may only be deducted from the taxpayer's income tax
18 liability for the taxable year in which the expenditures
19 occurred. The credit may not exceed five thousand dollars
20 (\$5,000) in any taxable year. If the credit exceeds the
21 taxpayer's income tax liability, the excess may be carried
22 forward for three consecutive years, but in no event shall the
23 annual credit amount exceed five thousand dollars (\$5,000) in
24 any taxable year. "

25 Section 3. A new section of the Corporate Income and

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1 Franchise Tax Act is enacted to read:

2 " [NEW MATERIAL] EMPLOYER LACTATION SUPPORT EXPENDITURES--
3 TAX CREDIT. --

4 A. To encourage support and protection for nursing
5 mothers in the workplace, a taxpayer that provides a lactation
6 location on his business premises in New Mexico, purchases or
7 rents lactation or lactation-related equipment for use on
8 those premises, hires a lactation consultant or otherwise
9 provides lactation-related support services for his employees
10 in New Mexico may claim a credit against the corporate income
11 tax imposed pursuant to the Corporate Income and Franchise Tax
12 Act in an amount equal to the total expenses, net of any
13 reimbursements, for such equipment, services and provision of
14 a lactation space incurred and paid by the taxpayer in the
15 taxable year.

16 B. If two or more taxpayers share in the cost of
17 providing a lactation space or lactation or lactation-related
18 equipment or services, each taxpayer shall be allowed a credit
19 in the proportion of the taxpayer's share of the total
20 expenses incurred by all taxpayers for that shared lactation
21 space, equipment and services in the taxable year.

22 C. The credit provided in Subsection A of this
23 section may only be deducted from the taxpayer's corporate
24 income tax liability for the taxable year in which the
25 expenditures occurred. The credit may not exceed five

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1 thousand dollars (\$5,000) in any taxable year. If the credit
2 exceeds the taxpayer's corporate income tax liability, the
3 excess may be carried forward for three consecutive years, but
4 in no event shall the annual credit amount exceed five
5 thousand dollars (\$5,000) in any taxable year. "

6 Section 4. Section 28-1-7 NMSA 1978 (being Laws 1969,
7 Chapter 196, Section 7, as amended) is amended to read:

8 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE. --It is an
9 unlawful discriminatory practice for:

10 A. an employer, unless based on a bona fide
11 occupational qualification, to refuse to hire, to discharge,
12 to promote or demote or to discriminate in matters of
13 compensation, terms, conditions or privileges of employment
14 against any person otherwise qualified because of race, age,
15 religion, color, national origin, ancestry, sex, physical or
16 mental handicap or serious medical condition; provided,
17 however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply
18 to discrimination based on age;

19 B. a labor organization to exclude an individual
20 or to expel or otherwise discriminate against any of its
21 members or against any employer or employee because of race,
22 age, religion, color, national origin, ancestry, sex, physical
23 or mental handicap or serious medical condition;

24 C. any employer, labor organization or joint
25 apprenticeship committee to refuse to admit or employ any

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1 individual in any program established to provide an
2 apprenticeship or other training or retraining because of
3 race, age, religion, color, national origin, ancestry, sex,
4 physical or mental handicap or serious medical condition;

5 D. any person, employer, employment agency or
6 labor organization to print or circulate or cause to be
7 printed or circulated any statement, advertisement or
8 publication, to use any form of application for employment or
9 membership or to make any inquiry regarding prospective
10 membership or employment which expresses, directly or
11 indirectly, any limitation, specification or discrimination as
12 to race, age, color, religion, national origin, ancestry, sex,
13 physical or mental handicap or serious medical condition
14 unless based on a bona fide occupational qualification;

15 E. an employment agency to refuse to list and
16 properly classify for employment or refer an individual for
17 employment in a known available job, for which the individual
18 is otherwise qualified, because of race, age, religion, color,
19 national origin, ancestry, sex or physical or mental handicap
20 or serious medical condition, unless based on a bona fide
21 occupational qualification, or to comply with a request from
22 an employer for referral of applicants for employment if the
23 request indicates either directly or indirectly that the
24 employer discriminates in employment on the basis of race,
25 age, religion, color, national origin, ancestry, sex, physical

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1 or mental handicap or serious medical condition unless based
2 on a bona fide occupational qualification;

3 F. any person in any public accommodation to make
4 a distinction, directly or indirectly, in offering or refusing
5 to offer its services, facilities, accommodations or goods to
6 any individual because of race, age, religion, color, national
7 origin, ancestry, sex or physical or mental handicap, provided
8 that the physical or mental handicap is unrelated to an
9 individual's ability to acquire or rent and maintain
10 particular real property or housing accommodation;

11 G. any person to:

12 (1) refuse to sell, rent, assign, lease or
13 sublease or offer for sale, rental, lease, assignment or
14 sublease any housing accommodation or real property to any
15 individual or to refuse to negotiate for the sale, rental,
16 lease, assignment or sublease of any housing accommodation or
17 real property to any individual because of race, age,
18 religion, color, national origin, ancestry, sex or physical or
19 mental handicap, provided that the physical or mental handicap
20 is unrelated to an individual's ability to acquire or rent and
21 maintain particular real property or housing accommodation;

22 (2) discriminate against any individual in
23 the terms, conditions or privileges of the sale, rental,
24 assignment, lease or sublease of any housing accommodation or
25 real property or in the provision of facilities or services in

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1 connection therewith because of the race, age, religion,
2 color, national origin, ancestry, sex or physical or mental
3 handicap, provided that the physical or mental handicap is
4 unrelated to an individual's ability to acquire or rent and
5 maintain particular real property or housing accommodation; or

6 (3) print, circulate, display or mail or
7 cause to be printed, circulated, displayed or mailed any
8 statement, advertisement, publication or sign or use any form
9 of application for the purchase, rental, lease, assignment or
10 sublease of any housing accommodation or real property or to
11 make any record or inquiry regarding the prospective purchase,
12 rental, lease, assignment or sublease of any housing
13 accommodation or real property which expresses any preference,
14 limitation or discrimination as to race, age, religion, color,
15 national origin, ancestry, sex or physical or mental handicap,
16 provided that the physical or mental handicap is unrelated to
17 an individual's ability to acquire or rent and maintain
18 particular real property or housing accommodation;

19 H. any person to whom application is made either
20 for financial assistance for the acquisition, construction,
21 rehabilitation, repair or maintenance of any housing
22 accommodation or real property or for any type of consumer
23 credit, including financial assistance for the acquisition of
24 any consumer good as defined by Section 55-9-109 NMSA 1978,
25 to:

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1 (1) consider the race, age, religion, color,
2 national origin, ancestry, sex or physical or mental handicap
3 of any individual in the granting, withholding, extending,
4 modifying or renewing or in the fixing of the rates, terms,
5 conditions or provisions of any financial assistance or in the
6 extension of services in connection with the request for
7 financial assistance; or

8 (2) use any form of application for financial
9 assistance or to make any record or inquiry in connection with
10 applications for financial assistance which expresses,
11 directly or indirectly, any limitation, specification or
12 discrimination as to race, age, religion, color, national
13 origin, ancestry, sex or physical or mental handicap;

14 I. any person or employer to:

15 (1) aid, abet, incite, compel or coerce the
16 doing of any unlawful discriminatory practice or to attempt to
17 do so;

18 (2) engage in any form of threats, reprisal
19 or discrimination against any person who has opposed any
20 unlawful discriminatory practice or has filed a complaint,
21 testified or participated in any proceeding under the Human
22 Rights Act; or

23 (3) willfully obstruct or prevent any person
24 from complying with the provisions of the Human Rights Act or
25 to resist, prevent, impede or interfere with the commission or

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1 any of its members, staff or representatives in the
2 performance of their duties under the Human Rights Act; [or]

3 J. any employer to refuse or fail to accommodate
4 to an individual's physical or mental handicap or serious
5 medical condition, unless such accommodation is unreasonable
6 or an undue hardship; or

7 K. an employer to refuse to hire, to discharge, to
8 promote or demote or to discriminate in matters of
9 compensation, terms, conditions or privileges of employment
10 against a nursing mother for expressing milk, breastfeeding or
11 other related activities. "

12 Section 5. Section 38-5-11 NMSA 1978 (being Laws 1969,
13 Chapter 222, Section 11, as amended) is amended to read:

14 "38-5-11. QUALIFYING JURY PANELS. --

15 A. The court shall empanel jurors in a random
16 manner. The district judge or his designee or the magistrate
17 or his designee shall preside over the empaneling of a petit
18 jury panel. The district judge or his designee shall preside
19 over the empaneling of the grand jury panel. Jurors who
20 appear for service shall be questioned under oath as to their
21 eligibility for jury service by the district judge or his
22 designee or the magistrate or his designee. Claims of
23 exemption, requests for excuse from service or postponement of
24 [~~services~~] service shall be ruled upon by the district judge
25 or his designee or the magistrate or his designee.

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1 B. A district judge or his designee or a
2 magistrate or his designee may excuse, exclude or postpone the
3 [~~services~~] service of any person called as a juror on the
4 basis of:

5 (1) physical or mental illness of the person
6 or within his immediate family;

7 (2) a written request from the person's
8 employer for excuse on the ground that his services are
9 essential; [~~or~~]

10 (3) the person's prior business, professional
11 or educational commitments which conflict with jury service,
12 proven to the satisfaction of the district judge or his
13 designee or the magistrate or his designee; or

14 (4) a new mother who chooses to breastfeed or
15 express milk for her infant for up to one year following the
16 birth of her child.

17 C. The district judge or his designee or the
18 magistrate or his designee shall submit questionnaires to
19 prospective jurors to obtain any information that will aid the
20 court in ruling on requests for exemption or excuse from
21 service or postponement of service or that will aid the court
22 or parties in voir dire examination of jurors or in
23 determining a juror's qualifications to serve on a particular
24 petit jury panel, trial jury or grand jury. The district
25 judge or his designee or the magistrate or his designee shall

1 certify a numbered list of the jury panel members' names when
2 qualified. The certified list of jurors and the
3 questionnaires obtained from jurors shall be made available
4 for inspection and copying by any party to any pending
5 proceeding or [~~their~~] any party's attorney or to any person
6 having good cause for access to the list and the
7 questionnaires. "

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